



POLICE DEPARTMENT

-----X		
In the Matter of the Disciplinary Proceedings	:	
- against -	:	FINAL
Police Officer Kenneth Douglas	:	ORDER
Tax Registry No. 906146	:	OF
Quartermaster Section	:	DISMISSAL
-----X		

Police Officer Kenneth Douglas, Tax Registry No. 906146, having been served with written notice, has been tried on written Charges and Specifications numbered 2018-19483 and 2019-20376, as set forth on forms P.D. 468-121, dated September 4, 2018, and May 9, 2019, respectively, and after a review of the entire record, Respondent is found Guilty of the charged misconduct in *Disciplinary Case No. 2019-20376* and Specification 2 in *Disciplinary Case No. 2018-19483*; Respondent is found Not Guilty of the charged misconduct in Specification 1 in *Disciplinary Case No. 2018-19483*.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Kenneth Douglas from the Police Service of the City of New York.

  
DERMOT F. SHEA  
POLICE COMMISSIONER

EFFECTIVE: 4/29/21



POLICE DEPARTMENT

March 4, 2021

-----X  
In the Matter of the Charges and Specifications :

- against - :

Police Officer Kenneth Douglas :

Tax Registry No. 906146 :

Quartermaster Section :

Case Nos.

2018-19483

2019-20376

-----X  
At:

Police Headquarters  
One Police Plaza  
New York, NY 10038

Before:

Honorable Josh Kleiman  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

David Green, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent:

Craig Hayes, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

## CHARGES AND SPECIFICATIONS

### Disciplinary Case No. 2018-19483

1. Said Police Officer Kenneth Douglas, while assigned to the 102<sup>nd</sup> Precinct, on or about August 30, 2018, at about 2130 hours, while off-duty, inside said Police Officer's residence in Kings County, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer, in the presence of [REDACTED] Minor BD [REDACTED], wrongfully threw a stool towards his [REDACTED] Minor AD [REDACTED], and forced him to leave the house without shoes.

P.G. 203-10, Page 1, Paragraph 5      PUBLIC CONTACT – PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

2. Said Police Officer Kenneth Douglas, while assigned to the 102<sup>nd</sup> Precinct, on or about August 30, 2018, at about 2130 hours, while off-duty, inside said Police Officer's residence in Kings County, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer, in the presence of [REDACTED] Minor CD [REDACTED], wrongfully grabbed [REDACTED] Minor BD [REDACTED] by her neck, applied pressure to her neck, and pushed her into a couch, causing her to be alarmed and fear for her physical safety.

P.G. 203-10, Page 1, Paragraph 5      PUBLIC CONTACT – PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

### Disciplinary Case No. 2019-20376

1. Said Police Officer Kenneth Douglas, while off-duty and assigned to the Manhattan Court Section, on or about February 13, 2019, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer wrongfully used threatening, derogatory, or otherwise discourteous language toward Sergeant Johnson Jacques.

P.G. 203-10, Page 1, Paragraph 5      PUBLIC CONTACT – PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me remotely on January 5,

2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Mark Boyle and Sergeant Johnson Jacques as its witnesses.



Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent: (1) Not Guilty of throwing an item of furniture at [REDACTED] Minor AD, in the presence of [REDACTED] Minor BD, as charged in Specification 1 in *Disciplinary Case No. 2018-19483*; (2) Guilty of placing his left hand on [REDACTED] Minor BD's neck and pushing her, causing pressure to be applied to her neck, and doing so in the presence of [REDACTED] Minor CD, as charged in Specification 2 in *Disciplinary Case No. 2018-19483*; and (3) Guilty of an act of discourtesy towards a superior as charged in the sole specification in *Disciplinary Case No. 2019-20376*. Given Respondent's prior disciplinary history, I recommend that Respondent's employment with the Department be terminated.

## ANALYSIS

### Disciplinary Case No. 2018-19483 – Alleged Acts of Domestic Violence

#### *Factual Record*

On August 30, 2018, at approximately 8:30 p.m., Sergeant Mark Boyle, the assigned patrol supervisor in the 81<sup>st</sup> Precinct, responded to a call concerning a member of the service involved in an allegation of child abuse stemming from a family dispute. Upon arrival, Sergeant Boyle observed Respondent sitting on the front stoop of his home. Respondent told him, "They came at me, so I put them down."<sup>1</sup> Sergeant Boyle proceeded inside the residence where he encountered [REDACTED] Minor AD, who explained that he had a verbal dispute with [REDACTED] Respondent about the cleanliness of the house. AD made no allegations at the time of any physical

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<sup>1</sup> The trial transcript incorrectly recorded Sergeant Boyle's testimony as to the words spoken by Respondent as "I put him down" (Tr. 36). The error is manifest in that the attorney questioning Sergeant Boyle repeats the words back to him as "put them down." Furthermore, this Tribunal heard Sergeant Boyle state "put them down."

altercation, and Sergeant Boyle observed no injuries. He did not observe any furniture out of place in the home. (Tr. 34-37, 39, 41)

After speaking with AD and as he was about to leave, Sergeant Boyle encountered Respondent's two daughters outside the home. [REDACTED] Minor BD explained that she was downstairs when she heard Respondent and AD arguing. She proceeded upstairs and confronted Respondent, who placed his hand on her "neck area" and "pushed off of her." BD did not report any injuries or pain and Sergeant Boyle observed none. (Tr. 37-38)

Sergeant Boyle then spoke to [REDACTED] Minor CD. She stated that Respondent had "choked" BD and made no further statements about the incident. He testified that CD appeared to be "very worried." Sergeant Boyle directed all the parties to proceed to the 81<sup>st</sup> Precinct. He did not participate in any of the subsequent interviews of Respondent's children that took place at the stationhouse that night; however, he later affected the arrest of Respondent in connection with the allegations made by his children during their interviews. (Tr. 38-40)

None of Respondent's three children (AD, BD, and CD) appeared at trial. Rather, the Department, on stipulation, admitted into evidence the audio and corresponding transcripts of their interviews at the 81<sup>st</sup> Precinct and a 911 call made by BD. At approximately midnight the night of the incident, Department investigators interviewed AD, followed by BD at 12:45 a.m., and CD at 1:12 a.m. (Dept. Exs. 1-4, 7-8)

In his Department interview, AD explained that earlier that day, in the morning, Respondent told his children that he was not happy about the state of their home and to clean up. AD and BD & CD stayed home all day. AD claimed that he swept the floor and cleaned his room and told BD clean the kitchen and fold the clothes on the couch. (Dept. Ex. 2, at 3-4)

According to AD, when Respondent returned later that day, at approximately 7:15pm, he again expressed disapproval about the state of their home, in particular the mess on the kitchen



table, and proceeded to lecture them. The lecture made AD angry and he admitted that he had a "disrespectful kind of look on my face." Respondent then told AD "you're pissing me off" and took a step towards him. AD took a step back. Respondent asked, "Do you want to size me up?", taking another step towards him. AD then jumped over the couch, whereupon Respondent threw a black stool in his general direction, stating, "Get out!" AD, fearing for his safety, ran out of the house. He estimated that the dispute with Respondent lasted "[n]o longer than ten minutes." When AD left the house he left without shoes on, so he proceeded to his aunt's house "around the corner" "to get a pair." He returned home approximately 20-40 minutes later. AD did not observe any of the charged events that happened in the home involving BD & CD. (Dept. Ex. 2, at 4-5, 9, 11-13, 16, 20-21, 23)

AD did not believe that the incident warranted calling police. He clarified that he did not believe Respondent was trying to hit him with the stool, although it landed a "foot away from me." He described the stool as black, metal, and approximately two and half feet tall. He further explained that Respondent was not "close enough to like swing on me or anything," but he did fear for his safety. AD further stated that Respondent had never before laid a hand on him or thrown anything at him. The last time he left the house because of a loud fight with Respondent was approximately one year ago. (Dept. Ex. 2, at 4-5, 10-11, 13, 16, 19, 23)

AD stated that BD was with him when the incident between himself and Respondent occurred and that "she saw what happened." He stated that CD was downstairs, "so I don't think she saw what happened." AD remembered that as he was leaving BD screamed "What are you doing?" at Respondent. (Dept. Ex. 2, at 7-9)

AD further told Department investigators that BD had been "choked." When Department investigators explored this statement further, BD first claimed she had said this "at the house," then he remembered that he had overheard BD tell her uncle that she had been

"choked" when they were in the Muster Room at the 81<sup>st</sup> Precinct. AD stated that he then confirmed it by asking BD in the Muster Room if she had been "choked" and she answered "Yeah." (Dept. Ex. 2, at 13-16)

BD told Department investigators that earlier that day Respondent came home and complained about how the house looked. He told his children to turn off the TV and the computer, and went into his room "for a while." When he returned, he asked them, "What did you guys do all day?" AD, "with an attitude," replied, "I cleaned my room and I swept and stuff." Respondent approached AD, who backed up. Respondent then threw a "little black chair" at AD, who was approximately 10 feet away, missing him. BD was three feet away from Respondent when he threw the chair. Respondent told AD to "get out!" and AD ran out of the house. Respondent picked up a "hot sauce bottle" and was about to throw it when BD intervened by placing herself in front of Respondent. (Dept. Ex. 4, at 2-7, 22)

BD stated that Respondent then told her to "get out!" and BD replied, "no." Respondent then grabbed her by the front of her neck with his left hand and pushed her on to the couch. BD stated that Respondent did not squeeze her neck, but used it to push her on to the couch, approximately 5-6 feet away. The push caused her to lose her breath "[a] little bit." Once on the couch, Respondent kept his hand on her neck to hold her down, "but it wasn't tight." BD grabbed at Respondent's shirt to attempt to push him away. BD began yelling and cursing at Respondent. Respondent stated, "You're not going to talk to me like that, like I'm somebody on the streets." BD told CD to "call the police." As CD picked up the phone, Respondent left BD and moved towards CD. As he did so, BD used her cellphone to call 911. Respondent then stated, "you're not my kids anymore, change your last names," and went to his room. (Dept. Ex. 4, at 3, 7-11, 14-16)



Shortly, thereafter, BD and CD left to go to their local precinct. No evidence was presented as to what, if anything, they did at the 81<sup>st</sup> Precinct upon this first visit. When they returned, police officers were present at their home. [AD] had also returned. BD stated that this type of interaction with [Respondent] had never happened before. He had never before put his hands on her neck or thrown anything at her siblings. BD stated that when [Respondent]'s hand was on her neck she never felt in fear of her life, but she did worry that [Respondent] might hit her. BD further stated that [CD] came upstairs after AD left, and she observed the entire altercation between BD and [Respondent]. CD was standing approximately six feet away from them "in shock." (Dept. Ex. 4, at 17-22; Dept. Ex. 6, at 2)

CD told Department investigators that she was in her room downstairs when she heard arguing upstairs. She heard [Respondent] say that [AD] had an "attitude" and heard him say to "size up." She also heard [BD] say, "What are you doing?" As she was proceeding upstairs to see what was happening, she heard a door slam. When she got upstairs, she saw [Respondent]'s left hand "on BD's throat." (Dept. Ex. 8, at 2-3, 5-6)

CD observed BD lying on the couch and Respondent standing up over her. Respondent had his right arm pulled back as if he was going to punch her, but he never hit her. When asked whether it sounded like BD had lost her breath when Respondent's hand was on her neck, CD replied, "It sounded like, like when you're about to cry." CD estimated that she was approximately eight feet away from [Respondent] when she observed [Respondent]'s hand on BD's throat. (Dept. Ex. 8, at 4, 7-8, 10-11)

CD explained that while Respondent still had his hand on [BD]'s neck, BD told CD to call 911. Respondent then took his hand off BD's neck and approached CD. At the same time, BD took out her phone and called the police. As BD described to police how [Respondent] was dressed, Respondent proceeded to his room "to change up his shirt and stuff." She stated that



Respondent "kept on saying stuff like we weren't his kids anymore and stuff like that."

Respondent then told them to "get out the house and [] wait outside because we weren't going to be in the house anyways when the cops came." BD and CD then left the house and went to the 81<sup>st</sup> Precinct. When they returned to their home, police officers were present on the scene. During the time BD was with her, she never complained of any pain or any injuries. (Dept. Ex. 8, at 6-9, 11-13)

CD remembered one prior incident, about a year ago, when Respondent had smacked AD and AD looked like he was going to hit Respondent back, but her mother separated them. CD further stated that she and [BD] "got beatings" but "nothing like this serious." (Dept. Ex. 8, at 15-17)

The parties stipulated to the admission of BD's 911 call into evidence. On the call, BD stated, "[Respondent] just hit [AD] and he tried to grab me by the hair and hit me." BD confirmed that the only occupants in the house at the time were Respondent, her, [AD], and [CD]. She further described [Respondent]'s clothing. No further statements as to the underlying incident are included in the 911 call. (Dept. Ex. 10)

Respondent testified that on August 30, 2018, he returned home from work to a messy house, which indicated to him that his children (AD, BD, and CD) had not done their chores. He told them to do their chores multiple times but they persisted in watching television. [AD] "was huffing and puffing, and rolling his eyes and then . . . pumping up his fist." Respondent told him that if he felt he was "a man," he could leave. AD got dressed and left. He could only "guess" that AD "grabbed" a pair of shoes before he left. Respondent claimed that he did not make any physical contact with [AD] or throw any furniture. (Tr. 83-88)

Respondent claimed that his older daughter, BD, became upset and walked toward him while "flaring her hands." Respondent put out his left hand with his palm facing upward to stop

her and she walked into it, pushing with her left upper torso and the bottom of her left shoulder against his hand. He kept his hand out while telling BD to calm down. BD then stepped back and said she was going to call the police. Respondent went to his bedroom to retrieve his Department identification. (Tr. 89-90, 109, 114-15)

By the time the police arrived, Respondent's daughters had left. He showed the officers his identification and stated that he was a police officer. He then learned that his daughters had arrived at his resident precinct, the 81<sup>st</sup> Precinct. A sergeant came to the scene and took Respondent's identification and firearms. Respondent denied that he told the sergeant that he "put them down." He was then brought to the precinct. Respondent was arrested for assault that night, but the case was eventually dismissed. He stated that he did not choke or throw his daughter down and denied striking any of his children. (Tr. 91-95, 115)

On cross-examination, Respondent admitted that his daughter, BD, told him that he "choked" her after he had stopped her with his hand. He stated that he had no idea why she would say that. Respondent further denied the narratives in his children's interviews and BD's 911 call, stating that they were "absolutely not" true. Respondent admitted that his children had not "made up stories about [him] before" and he had no explanation why they did so now; although Respondent did say that his wife and him were "going through problems" at the time and his children may have blamed him. (Tr. 110-112, 128-131)

### *Findings*

Specification 1 charges Respondent with throwing a stool at **Minor AD**, forcing AD to leave his home without shoes on, and doing so while in the presence of his **Minor BD**. Specification 2 charges Respondent with wrongfully grabbing BD by her neck, applying pressure to her neck, and pushing her onto a couch, causing her to be alarmed



and fear for her physical safety, and doing so while in the presence of [REDACTED] Minor CD [REDACTED].

Since none of Respondent's children testified at trial, assessing the credibility of their hearsay statements is limited to a determination of the consistency and plausibility of their prior statements in connection with the totality of the evidence presented at trial, including the credibility of Respondent's trial testimony. "[I]t is well established that, in an administrative hearing, hearsay is admissible . . . Further, hearsay evidence 'may, under appropriate circumstances, form the sole basis of an agency's determination'" (*Matter of Cauthen v NY State Justice Ctr. for the Protection of People with Special Needs*, 151 AD3d 1438, 1440 [3d Dept 2017] [internal citations omitted]).

That hearsay is admissible in this tribunal does not mean that it must be accorded dispositive weight absent corroboration or that it is to be accorded any weight if it is unreliable (*see Dep't of Environmental Protection v Cortese*, OATH Index No. 1613/06 [Sept. 12, 2006] ["Although hearsay statements are admissible in an administrative proceeding and in certain circumstances may constitute the sole basis for an agency determination, hearsay statements must be scrutinized carefully in order to determine if they are 'so substantially reliable and probative that a reasonable inference of the existence of a fact may be culled therefrom.'"] [*quoting Police Dep't v Ayala*, OATH Index No. 401/88, at 5 [Aug. 11, 1989]]). Indeed, "the more central the hearsay is to the agency's case, the more serious the question of basic fairness and the more critical the question of reliability may become" (*Fire Dep't v Ehrlich*, OATH Index No. 1850/12 [May 21, 2013] [*quoting Calhoun v Bailar*, 626 F2d 145, 149-50 [9th Cir 1980]]). Here, there is little doubt as to the centrality of the hearsay evidence to the Department's case as it constitutes the principal evidence of guilt upon which the Department relies.

The recorded interview statements of Respondent's children are corroborative of one another. AD admitted that he acted in a "disrespectful" manner towards Respondent and that in response Respondent became angry and threw a "black stool" in his direction, causing him to fear for his safety and run from his home without wearing shoes. BD stated that she observed Respondent throw a "little black chair" at AD and that Respondent picked up another object to throw but she intervened, stating, "What are you doing?" She stated that Respondent then placed his left hand on the front of her neck but did not squeeze her neck, and in pushing her onto a couch caused her to briefly lose her breath. CD stated that she was downstairs and heard Respondent and AD arguing, the sound of a door slam, and BD say, "What are you doing?" CD proceeded upstairs and observed Respondent's left hand on BD's throat.

Respondent's version of events, on the other hand, is implausible and self-serving. According to Respondent, based solely on him telling his children that they had "chores to do," AD left home, his daughter attempted to attack him and then called police, his two daughters left home and walked to the 81<sup>st</sup> Precinct, and, after midnight, all of his children were separately interviewed and provided consistent, but fabricated, statements. Logic and experience would dictate that the actions of Respondent's children likely resulted from a more significant altercation than Respondent described. Furthermore, the tribunal credits Sergeant Boyle's testimony that Respondent told him, "They came at me, so I put them down."

Nevertheless, the veracity of AD's and BD's recorded statements were justifiably called into question by Respondent, who urged that they be compared to several statements AD and BD made prior to their recorded interviews. On a 911 call placed by BD seconds after she claimed that she was involved in a physical altercation with Respondent, she told the 911 operator that



Respondent “hit **AD** and tried to grab her hair and hit her.”<sup>2</sup> She did not mention being grabbed by the neck or pushed on a couch. Additionally, as Respondent’s attorney pointed out at trial, no evidence was admitted that either AD or BD mentioned to responding officers at the scene that Respondent threw anything at AD. To the contrary, the responding patrol supervisor, Sergeant Boyle, testified that when he spoke with AD at the scene prior to his recorded interview, AD made no mention of any physical altercation or a stool having been thrown; instead, AD claimed that there had only been a verbal dispute between himself and **Respondent** about the cleanliness of the home. Later, at his recorded interview with Department investigators, AD was asked whether he had told the responding officers at the scene “exactly what you told us;” AD responded, “Yes” (Dept. Ex. 2, at 18).

The inherent problem this tribunal faces when a hearsay statement is reasonably controverted by more than the mere arguments of the parties is that the hearsay witness is not available to explain or admit the inconsistency (*see* Prince, Richardson on Evidence § 8-102 [“A witness who testifies upon trial to some fact may be cross-examined for the purpose of determining what weight, if any, should be given to the testimony. The cross-examiner may inquire into the witness’ veracity, accuracy of perception, ability to recall past events correctly - in brief, the cross-examiner is given the opportunity to lay bare whatever weakness there may be in the witness’ story, and the trier of fact has the opportunity to assess credibility by observing the demeanor of the witness. In the usual case of hearsay, no such opportunity exists.”]). Due to

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<sup>2</sup> Typically, evidence of a prompt outcry or an excited utterance, such as statements made on a 911 call during or immediately after a traumatic event, is regarded as possessing factors that make such hearsay statements more reliable (*see People v Smith*, 171 A.D3d 1102, 1103 [2d Dept 2019] [“Although the declarant’s statements to the 911 operator were hearsay, they were nevertheless admissible under the exception for excited utterances ‘made contemporaneously or immediately after a startling event’ or present sense impressions made while he was ‘perceiving the event as it is unfolding or immediately afterward’ which are ‘corroborated by independent evidence establishing [their] reliability.’”] [internal citation omitted]; *People v Edwards*, 47 NY2d 493, 496-97 [1979] [“Underlying this exception is the assumption that a person under the influence of the excitement precipitated by an external startling event will lack the reflective capacity essential for fabrication and, accordingly, any utterance he makes will be spontaneous and trustworthy.”]).

the importance of cross-examination in our tribunal's adversarial process, unresolved inconsistencies in connection with a Department hearsay witness should be weighed in favor of Respondent absent corroboration or other indicia of reliability. Accordingly, the tribunal must explore as to each specification whether the hearsay statements of Respondent's children are adequately corroborated or supported to overcome the credibility issues borne by their prior inconsistent statements.

*Specification 1 – Throwing of the Stool at AD*

That a stool was thrown by Respondent at AD was alleged for the first time when AD was interviewed by Department investigators at the 81<sup>st</sup> Precinct the night of the incident. There is no evidence, however, that it was mentioned to responding officers at the scene. Rather, BD affirmatively told Sergeant Boyle the dispute was limited to a verbal dispute about the cleanliness of the home. This constitutes a prior inconsistent statement that was unresolved at AD's interview. Sergeant Boyle further testified that he did not observe any furniture out of place inside the home. Nevertheless, BD corroborated the allegation at her interview, following AD's interview, stating that she had observed Respondent throw a "small chair" at AD. While she stated that Respondent ran out of the house, she does not make any statements as to AD leaving the house without shoes on. The Department presented no further evidence that a stool was thrown or that AD left home without shoes.

Given AD's prior inconsistent statement and that the allegation is only corroborated by another hearsay statement, I find that the hearsay statements concerning the throwing of the stool have not been proven to be "so substantially reliable" as to be credited by this tribunal absent further inquiry. In order to satisfy the preponderance of the evidence standard in a matter based upon hearsay evidence, this tribunal must first make a determination as to the reliability of the



hearsay evidence. Here, the tribunal is not satisfied that AD's hearsay statement is sufficiently reliable to establish the charged misconduct absent further testing of the type cross-examination would have provided. Accordingly, while I do not find the interview statements of AD or BD to be untruthful, I do find that the Department has failed to prove by a preponderance of the credible evidence that Respondent threw a stool at AD and forced him to leave the house without his shoes. I, therefore, find Respondent Not Guilty of Specification 1 in *Disciplinary Case No. 2018-19483*.

*Specification 2 – Placement of Hand on BD's Neck and Pushing with Pressure to Neck*

Unlike the allegation charged in Specification 1, which was made for the first time at a formal interview, BD alleged that Respondent had grabbed her by the neck first to Respondent during the incident, then to Sergeant Boyle after the incident, and again to Department investigators during her interview at the 81<sup>st</sup> Precinct. The allegation was also corroborated by CD, who stated that she had observed Respondent "choking" **BD**. No evidence was introduced of any prior inconsistent statements made by CD. Therefore, unlike the conduct described in Specification 1, BD's allegation was not only supported by a corroborating hearsay witness, but by two testifying witnesses, Sergeant Jacques and Respondent, who confirmed that BD had alerted them to the allegation. That a prompt outcry regarding the allegation of "grabbed me by my neck and pushed me on the couch" (Dept. Ex. 2, at 3) was not made on the 911 call is less concerning given that BD alerted **Respondent** that she had been "choked" just prior to the 911 call. I further credit the statements of BD and CD based upon my review of their recorded interviews, in which they both provided careful and detailed statements and were not evasive or combative. Weighing the unexplored omission on the 911 call against the significant corroboration provided by CD and two testifying witnesses, and finding Respondent's

implausible version of events to be unpersuasive, I find that BD's allegation of being grabbed by the neck and pushed on the couch to be sufficiently reliable to be credited by this tribunal and further find that the Department has proven Specification 2 by a preponderance of the credible evidence. Accordingly, I find Respondent Guilty of Specification 2 in *Disciplinary Case No. 2018-19483*.

Disciplinary Case No. 2019-20376 – Alleged Act of Discourtesy to a Supervisor

*Factual Record*

Former Sergeant Johnson Jacques<sup>3</sup> testified that on February 13, 2019, he was a probationary sergeant assigned as the Desk Officer for the Manhattan Court Section. At approximately 2:30 p.m., Respondent called the Desk and Sergeant Jacques answered. Respondent stated that he had been at the 102<sup>nd</sup> Precinct all day due to a 102<sup>nd</sup> Precinct shooting, involving Detective Brian Simonsen, who had been killed the night before in the line of duty. Respondent had worked previously with Detective Simonsen when he was assigned to the 102<sup>nd</sup> Precinct. Respondent stated to Sergeant Jacques that he was mentally and physically drained, that he was "not himself," and asked for the day off. Sergeant Jacques stated that upon hearing these words he became concerned for Respondent's wellbeing and decided to deny him the day off. Sergeant Jacques further told Respondent that if he was going to report sick, he would need to call back to verify that he had done so. (Tr. 24, 46-51)

Following the call with Respondent, Sergeant Jacques spoke to two supervisors, who instructed him to report the matter to the Medical Division. After speaking with the Medical Division, Sergeant Jacques called the Inter-City Correspondence Unit ("ICCU") to request a

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<sup>3</sup> Police Officer Jacques was demoted from the rank of Probationary Sergeant in 2019. His demotion was not related to the events at issue in this disciplinary matter. At all times relevant to the instant matter Police Officer Jacques was a Sergeant. (Tr. 46-47)



wellness check be performed, whereby officers from Respondent's local police department traveled to his residence to check on his wellbeing. The local police department reported back that Respondent was not home, but that his sister had reported that Respondent had gone to work. (Tr. 53, 55-56)

Later that day, after Respondent's tour had started, Sergeant Jacques noticed that Respondent was not present. He informed his supervisors of the absence. Sergeant Jacques was instructed to contact Respondent. Approximately half an hour after the start of Respondent's tour, Sergeant Jacques called Respondent. Upon answering his call, Sergeant Jacques identified himself. Respondent immediately replied, "Nigger. don't ever call my phone again, you heard me? I will kill you." Respondent then hung up the phone. (Tr. 57-58)

Sergeant Jacques reported the substance of the call to his supervisors. They instructed him to contact the Early Intervention Unit. That unit told him to wait and see if Respondent reported for duty. A "few hours late," at approximately 9 p.m., Respondent reported for duty. (Tr. 59-60)

Sergeant Jacques reported that prior to this incident he had a "respectful relationship" with Respondent. He had never before had an "argument" with him and this was the first time that Respondent asked for a day off from him. (Tr. 60)

On cross-examination, Sergeant Jacques explained that he had previously handled "E-Day" (emergency day off) requests. He provided examples of common E-Day requests, such as a basement flooding or a spouse or a kid in the hospital. Here, he believed the situation was different because he believed Respondent might "hurt himself." Sergeant Jacques stated that he called the Medical Division approximately 19 minutes after Respondent called him the first time and that he called "ICCU" to request a wellness check approximately 27 minutes after speaking to the Medical Division. Sergeant Jacques testified, however, that it was not until his second call

with Respondent that he was worried about Respondent enough to contact Early Intervention. (Tr. 64, 69, 72, 75, 77-78)

Respondent testified that on February 12, 2019, after he had gotten home from work, he received a text message that his former co-worker and friend, Detective Brian Simonsen, had been shot. Upon hearing the news, Respondent traveled directly to Jamaica Hospital, where he eventually learned that Detective Simonsen had passed away from his injuries. After a "salute ceremony" at the hospital, Respondent then joined colleagues back at the 102<sup>nd</sup> Precinct, where he and Detective Simonsen had worked together. Respondent was assigned to the 102<sup>nd</sup> Precinct from June 2014 to October 2018 when he was modified in connection with *Disciplinary Case No. 2018-19483*. (Tr. 95-98)

At approximately 3:00 a.m., he returned home. Respondent did not report for the first of his two back-to-back tours that day, at 8:00 a.m., because he was in "shock" and "mourning." He admitted that he "lost track of time." When he realized that his first tour had begun, he called a supervisor and told him that he had been up all night because a friend of his from the 102<sup>nd</sup> Precinct had died. The supervisor approved Respondent's request for the day off and told him to call supervisors at his second tour about taking an "E-Day" for that tour as well. (Tr. 98-100)

Respondent called Sergeant Jacques and explained the situation. Sergeant Jacques told him to report sick instead. Respondent asked to speak to a duty captain because he did not in fact feel sick, and Sergeant Jacques became enraged and hung up the phone. Respondent tried to contact a duty captain but was unsuccessful. (Tr. 101-104)

Respondent went to the store and received a call from his sister that local police were looking for him because his command had informed them that he wanted to kill himself. Respondent denied making any such statement. He began heading home and received a call from

Sergeant Jacques. Respondent admittedly told him, "You bitch ass nigger, don't ever call my fucking phone again, and when I get there, Ima see you." Respondent explained that ordinarily he would not have spoken to Sergeant Jacques in this manner, "but I was – I was emotional then. I – I – I lost a friend. I was – I was exhausted, tired." (Tr. 104-106)

On cross-examination, Respondent admitted that Sergeant Jacques had reason to be concerned for his welfare even without Respondent actually saying that he would harm himself. However, he testified that Sergeant Jacques was "pretty much an asshole" because "I was just calling for a day off." He further asserted that he knew Sergeant Jacques's motivations and was sure that he had reached out to local police simply to see if Respondent was home rather than out of concern for his safety. He claimed, admittedly for the first time at trial, that he did not ask a lieutenant for permission for the E-day because he overheard a lieutenant in the background telling Sergeant Jacques that Respondent should go on sick leave. When asked why he was late to his tour by two to three hours, he claimed that his car had had a flat tire, which he acknowledged he had also never revealed before. (Tr. 118-125)

### *Findings*

At the outset, it is important to acknowledge that a line of duty death of a member of the service is an extreme and somber event that the Department responds to with the utmost seriousness. Whether by way of posters displayed at every command, trainings, links and apps made available on Department computers and smartphones, or through the daily words of support of fellow officers, members of the Department are reminded each day of the numerous ways in which the Department assists members experiencing grief, bereavement, or emotional distress.



The actions of Sergeant Jacques in contacting ICCU and Early Intervention rather than being callous, as Respondent argued, were reasonable in light of the Department's sensitivity to mental trauma. Indeed, Administrative Guide Section 320-22 requires commanding officers to be aware of "early intervention indicators" being displayed by those under their command, including, involvement in "critical incidents" such as a "line of duty death," a "noticeable change in personality," or a member who is "argumentative/provokes confrontation." That Sergeant Jacques sought to take further steps to ensure Respondent's wellbeing was unquestionably reasonable.

Ordinarily, under these circumstances, isolated verbal outbursts while grieving would not warrant formal disciplinary action. Here, however, Respondent's trial testimony stymied any attempt to excuse his extreme and threatening outburst. Nearly two years later, Respondent expressed no remorse and when Respondent was asked why he believed that Sergeant Jacques was not acting out of concern when he requested a wellness check, Respondent replied, in this trial room, that it was because Sergeant Jacques was "pretty much an asshole." This tribunal is troubled by Respondent's lack of judgement and continued inability to express himself in a professional manner, especially given the ample passage of time since the incident date. Respondent's language might have been excusable had Respondent shown remorse, admitted his wrongdoing, and convinced the tribunal that his grief or exhaustion were solely responsible for his error in judgement. Here, however, Respondent's trial testimony revealed that Respondent "was just calling for a day off" and his anger when it was not granted was likely the primary motivating factor for his threatening and discourteous statement to Sergeant Jacques. Taking into account Respondent's testimony at trial, and the credible testimony of Sergeant Jacques, I find Respondent Guilty of the sole specification in *Disciplinary Case No. 2019-20376*.

## PENALTY

In order to determine an appropriate penalty for Respondent, his service record was examined (*see Matter of Pell v Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Respondent was appointed to the Department on February 28, 1994. Information from his personnel record that was considered in making these penalty recommendations is further detailed in an attached confidential memorandum.

Respondent has been found guilty of grabbing [Minor BD] by the neck and throwing her onto a couch causing her to briefly lose her breath in the presence of [Minor CD], and he has been found guilty of using threatening and discourteous language toward a supervisor. Ordinarily, an act of discourtesy toward a supervisor would result in a penalty range of between 10 and 15 vacation days (*see, e.g., Disciplinary Case No.* [redacted]; *Disciplinary Case No.* [redacted] [redacted]), and a physical act of domestic violence, absent significant injuries, would result in a penalty consisting of the forfeiture of 30 penalty days, placement on one-year Dismissal Probation, and the requirement that the member cooperate with counseling (*see, e.g., Disciplinary Case No.* [redacted]). Here, however, Respondent was previously found guilty of a physical act of domestic violence in a prior disciplinary matter (*Disciplinary Case Nos. 82032/06 & 83759/08* [October 19, 2009]). The penalty recommendation counseled by case precedent for an officer who has been found guilty for a second time of engaging in a physical act of domestic violence is separation from the Department (*see Disciplinary Case Nos.* [redacted]).

In Respondent's prior disciplinary matter involving a physical act of domestic violence (*Disciplinary Case Nos. 82032/06 & 83759/08* [October 19, 2009]), he was found guilty of punching his girlfriend in front of her 12-year-old daughter and, at the scene of yet another

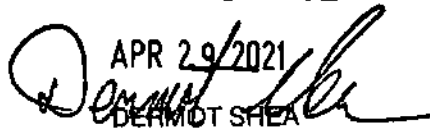
domestic incident, failing to identify himself and request the response of a patrol supervisor. It is important to note that in that case, as here, Respondent claimed that the only physical element of the domestic dispute in which he was accused of punching his girlfriend occurred when he was holding his girlfriend back to prevent her from assaulting him. In connection with this prior disciplinary matter, Respondent forfeited 60 penalty days and was placed on one-year Dismissal Probation.

In yet another prior disciplinary matter (*Disciplinary Case No. 2014-12925* [February 16, 2016]), Respondent was found guilty of utilizing a prohibited chokehold maneuver on an intoxicated arrestee, forfeiting 15 vacation days.

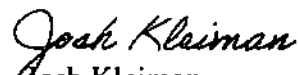
Given the aggravating factors present herein, mainly the involvement of minor children and Respondent's prior disciplinary matter involving a prior physical act of domestic violence, the instant disciplinary case does not warrant a departure from case precedent.

Accordingly, it is recommended that Respondent be DISMISSED from his employment with the New York City Police Department.

**APPROVED**

APR 29 2021  
  
DERMOT SHEA  
POLICE COMMISSIONER

Respectfully submitted,

  
Josh Kleiman  
Assistant Deputy Commissioner Trials





## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER KENNETH DOUGLAS  
TAX REGISTRY NO. 906146  
DISCIPLINARY CASE NOS. 2018-19483 & 2019-20376

Respondent was appointed to the Department on February 28, 1994. On his three most recent annual performance evaluations, Respondent received a 4.0 overall rating of "Highly Competent" for 2016 and twice received 3.0 overall ratings of "Competent" for 2014 and 2015. He has been awarded two medals for Excellent Police Duty.

[REDACTED]

Respondent has a formal disciplinary record. In 2000, Respondent forfeited 30 vacation days and was placed on one-year dismissal probation after he pled Guilty to engaging in prohibited conduct.

In 2009, Respondent forfeited 32 pre-trial suspension days and 28 vacation days for misconduct that was the subject of two disciplinary cases. In the first matter, Respondent was found Guilty of (i) failing to request a patrol supervisor after being involved in an unusual police occurrence, (ii) failing to immediately identify himself as a member of the service to responding officers after being involved in a police incident, (iii) failing to notify the on-duty responding officers that the other participant in the domestic incident that he was involved in was a member of the service, and (iv) failing to provide on-duty responding officers with his pedigree information. In the second matter, Respondent was found Guilty of (i) wrongfully causing physical injury to another person when he punched and struck said individual and (ii) knowingly acting in a manner likely to be injurious to the physical, mental, or moral welfare of a child less than 17-years-old when he punched and struck an individual in front of a child.

In 2016, Respondent forfeited 15 vacation days after having been found Not Guilty of using excessive force by punching an individual without sufficient legal authority and having been found Guilty of placing an individual into a chokehold.

For your consideration.

*Josh Kleiman*

Josh Kleiman

Assistant Deputy Commissioner Trials